Nos. 17-1717, 18-18

In the Supreme Court of the United States

THE AMERICAN LEGION, *et al.*,
Petitioners,

v.

AMERICAN HUMANIST ASSOCIATION, *et al.*,
Respondents.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION,
Petitioner,

v.

AMERICAN HUMANIST ASSOCIATION, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF FAMILY RESEARCH COUNCIL AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

Family Research Council ("FRC") is a 501(c)(3) nonprofit public-policy organization headquartered in Washington, D.C. Founded in 1983, FRC exists to advance faith, family, and freedom in public policy and the culture from a Christian worldview. As part of its work, FRC advocates for a robust role for religion in the public square, the advancement of religious liberty in the United States, and an understanding of the Establishment Clause consistent with its original meaning. FRC also advocates for the religious freedom of military servicemembers and desires to preserve the role of faith in their lives, where it serves them so well.

SUMMARY OF THE ARGUMENT

Religion is a part of human identity, and for many people it is a *way of being* that informs all aspects of their lives. Accordingly, the communities into which we organize ourselves often take on a religious character or identity. In times of suffering, when people are most likely to turn to religion for comfort, the predominant faith of the community understandably manifests itself. Whether the committee of private citizens in charge of the design of the Peace Cross sought to invoke Jesus Christ or simply to mimic the cross-shaped grave-markers on the overseas battlefields of

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[1] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than *amicus curiae*, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief. Petitioners and Respondents have given blanket consent to the filing of amicus briefs.

the First World War,[2] the Maryland-National Capital Park and Planning Commission's subsequent ownership and maintenance of the cross is consistent with the Establishment Clause of the United States Constitution.[3] The Peace Cross should be allowed to stand.

Efforts to remove manifestations of religion from the public square are on the rise. No matter the cause, the slightest communication of religious sentiment is often used as an excuse to tear down monuments, redraw seals, or silence public prayer—supposedly required, we are told, by the Establishment Clause. Faith is thus increasingly privatized and made acceptable only within the confines of one's personal life and activities. Yet the specious assertions made to challenge monuments like the Peace Cross are a threat to a proper understanding of the Establishment Clause. Taking down or dismantling this cross or others like it will have an effect far beyond their own removal. It will impact the way *faith itself* is perceived in public life.

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[2] *See* Pet. App. at 74a ("[T]he Monument explicitly memorializes forty-nine servicemen who died in Europe during World War I, and the 'cross developed into a central symbol of the American overseas cemetery' during and following World War I." (citation omitted)). "Pet. App." refers to the joint appendix filed with the petition for writ of certiorari in *American Legion v. American Humanist Association*, No. 17-1717.

[3] The Commission obtained ownership of the land in 1960, Pet. App. at 57a, "due to increased traffic on the roads," *id.* at 56a.

Although recent religious liberty efforts are promising, this trend of the privatization of faith also threatens the role of religion in military life—a trend that comes at a great cost to servicemembers' well-being and morale. "There are no atheists in the fox holes,"[4] as the saying goes. This sentiment captures the idea that reliance on faith is even more pressing in the context of military service than in any other profession, a claim supported by experts who have testified that spiritual fitness is critical in battle. This trend of privatization is deleterious to combat readiness and the overall health of our servicemembers; it must come to an end.

History not only reveals the importance of faith in military life, but the consistent protection and facilitation of its public expression. George Washington, Commander-in-Chief of the Continental Army during the Revolutionary War and the first president of our nation, was keenly aware of the role of his troops' faith in maintaining their overall health and readiness. It is not surprising, then, that he insisted on establishing a chaplaincy for the Army. The Continental Congress and the first Congress passed resolutions urging the religious and moral rectitude of the country's standing military. And numerous accounts reveal that American soldiers—from the Civil War to the conflicts in Afghanistan and Iraq—have turned to their faith to understand their role in war and to find comfort and healing. A ruling against Petitioners here would not merely result in the Peace

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[4] CARLOS P. ROMULO, I SAW THE FALL OF THE PHILIPPINES 263 (1943) (attributing the quote to Father William Thomas Cummings).

Cross being taken down; it would also send the message that faith has no part in how we think about military service.

As Establishment Clause jurisprudence stands today, a war memorial erected to commemorate the fallen of the First World War can be found unconstitutional simply because it is shaped like a cross. Faced with such animus toward public religious expression, how can a soldier feel comfortable openly discussing matters of the supernatural during the course of his or her military service—matters that inform how we grapple with life and death and that affect military readiness itself?

In addition to its role in a life of military service, religion plays a role in death—in the ways individuals, families, and communities commemorate those who have sacrificed their lives in the line of duty. The American Battle Monuments Commission has been explicitly created for this purpose, and around the world, our war memorials depicting religious symbols reinforce the idea that commemorating a soldiers' sacrifice is simply that—commemoration, not coercion. There is not just one war memorial at risk from this case, but many—and for the sake of our history, religion in our public life, and a proper understanding of the Establishment Clause, the Peace Cross should stand.

ARGUMENT

I. BECAUSE RELIGION IS INTEGRAL TO HUMAN IDENTITY, COMMUNITIES NATURALLY TAKE ON A RELIGIOUS IDENTITY.

Nearly seventy years ago, this Court proclaimed that "[w]e are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). This statement is just as true now as it was then.

Humans are religious beings, and the world is a religious place. As of 2015, 84% of the world's population—a share that is only expected to increase—adheres to some form of religious identity.[5] As of 2014, over 76% of Americans "identify with and participate in some form of religion."[6]

This leads communities—and nations—to naturally take on religious identities. When one travels to a country that identifies with a faith different from their own, it is reasonable to expect them to understand this difference and respect the predominant faith of that country. When an American visits the state of Israel, he understands and expects it to bear symbols of its

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[5] *The Changing Global Religious Landscape*, PEW RES. CTR. (Apr. 5, 2017), http://www.pewforum.org/2017/04/05/the-changing-global-religious-landscape/.

[6] BENJAMIN GINSBERG ET AL., WE THE PEOPLE: AN INTRODUCTION TO AMERICAN POLITICS 137 (11th essentials ed. 2017) (citing *America's Changing Religious Landscape*, PEW RES. CTR. (May 12, 2015), http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/).

Jewish character;[7] in the United Arab Emirates, marks of its Islamic identity;[8] and in Greece, reminders that it is primarily Christian.[9] The United States has been faced with this principle in recent years; several newly formed nations like Afghanistan and Iraq—in whose re-emergence we have invested much—have clearly proclaimed their Islamic identity during that process.[10]

The same principle applies to the various communities within the United States that have taken on a religious identity. When one travels to Utah, one sees reminders of Mormonism; in rural Alabama, Baptist Protestantism; in Rhode Island, Catholicism; in parts of Illinois, Islam.[11] Understanding the manner in

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[7] *See* BASIC LAW: HUMAN DIGNITY AND LIBERTY § 1 (1992) ("establish[ing] . . . the State of Israel as a Jewish and democratic state").

[8] *See* CONST. art. 7 (United Arab Emirates) ("Islam shall be the official religion of the Union.").

[9] *See* 2008 SYNTAGMA [SYN.] [CONSTITUTION] § II, art. 3, cl. 1 (Greece) ("The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ.").

[10] *See* CONST. art. 1 (Afg.) ("Afghanistan shall be an Islamic Republic . . . ."); CONST. art. 2 (Iraq) ("Islam is the official religion of the State . . . .").

[11] *See generally* Leila Fadel, *How Muslims, Often Misunderstood, Are Thriving in America*, NAT'L GEOGRAPHIC (May 2018), at 58-59, https://www.nationalgeographic.com/magazine/2018/05/being-muslim-in-america/ (mapping the size of Muslim populations and the percent of Muslims by county across the country); *Religious Landscape Study*, PEW RES. CTR., http://www.pewforum.org/religious-landscape-study/ (last visited Dec. 5, 2018) (providing an

which this principle affects all of humanity, it is proper—and constitutional—to publicly display a memorial that incorporates a community's Christian beliefs or traditions, just as it would be for any other religious beliefs or traditions.

A. Religious Identity Permeates All Aspects of Human Life.

Regardless of their faith tradition, people naturally express their faith in many aspects of their lives—especially when seeking answers to the "big" questions regarding creation, death, and how we honor those who have passed. Medical professionals have affirmed this reality. *See, e.g.*, Christina M. Puchalski, *Improving the Spiritual Dimension of Whole Person Care: Reaching National and International Consensus*, 17 J. PALLIATIVE MED. 642, 642 (2014) ("[S]pirituality improves patients' health outcomes, including quality of life."). The Joint Commission on Accreditation of Healthcare Organizations, for instance, is a nonprofit organization responsible for the voluntary accreditation of thousands of health care entities, and its accreditation requirements for certain programs include "providing care, to the extent possible, that accommodates spiritual needs during end-of-life care," and a "patient's right to access religious and other spiritual services."[12]

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interactive map to "[e]xplore religious affiliation data by state, region or select metro areas").

[12] *The Joint Commission – JCAHO*, HEALTHFINDER.GOV (Aug. 20, 2015), https://healthfinder.gov/FindServices/Organizations/Organization.aspx?code=HR1458; *Spiritual Assessment- Standards FAQ Details*, JOINT COMMISSION,

In the wake of tragic loss, human beings' public responses are often conspicuously religious in nature. *See, e.g.*, *Easing grief through religion and spirituality*, HARV. HEALTH PUBL'G: HEALTHBEAT, https://www.health.harvard.edu/mind-and-mood/easing-grief-through-religion-and-spirituality (last visited Dec. 4, 2018). Indeed, "[r]eligion and spirituality for many individuals extends beyond a 'means of coping' to a '*way of being*' that is foundationally rooted in every aspect of the individual's living and dying processes." Laurie A. Burke & Robert A. Neimeyer, *Spiritual Distress in Bereavement: Evaluation of a Research Program*, 5 RELIGIONS 1087, 1088 (2014) (emphasis added). Such public expressions of grief and sorrow take a variety of forms, including mass prayer meetings, vigils, worship services, or religious-themed memorials. For more than 200 years, individuals and local governments have erected memorials—especially crosses—to commemorate tragic events. *See* Jeffrey L. Durbin, *Expressions of Mass Grief and Mourning the Material Culture of Makeshift Memorials*, 35 MATERIAL CULTURE 22, 26 (2003). In New York City, out of the tragedy of the September 11, 2001 attacks, rescue workers found comfort in a 17-foot, cross-shaped beam pulled from the rubble of Ground Zero.[13] And in Bladensburg, Maryland, "a

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https://www.jointcommission.org/mobile/standards_information/jcfaqdetails.aspx?StandardsFAQId=1492&StandardsFAQChapterId=31&ProgramId=0&ChapterId=0&IsFeatured=False&IsNew=False&Keyword= (last modified Apr. 11, 2016).

[13] *See Am. Atheists, Inc. v. Port Auth.*, 760 F.3d 227, 233 (2d. Cir. 2014) (upholding the constitutionality of the National September 11 Museum's display of a beam in the shape of a Latin cross); Bill

group of private citizens organized as the Prince George's County Memorial Committee" and started a movement to erect a cross that would allow the "spirit" of forty-nine fallen World War I soldiers "to guide [the community] through the way of godliness, justice, and liberty." Pet. App. at 52a; *id.* at 52a-53a.

The government should not have to blind itself to the religious aspects of such public displays. Rather, the religious origins of many of America's monuments and its communal life should be *embraced* as part of *who we are* as a people. *See* Burke & Neimeyer, *supra*, at 1088. We should not shy away from it. *See Van Orden v. Perry*, 545 U.S. 677, 683 (2005) (plurality) (stating that "our national life reflects a religious people who, in the words of Madison, are 'earnestly praying, as in duty bound, that the Supreme Lawgiver of the Universe guide them into every measure which may be worthy of his blessing'" (citation and alterations in original omitted)); *Town of Greece v. Galloway*, 572 U.S. 565, 581 (2014) ("Government may not mandate a civic religion that stifles any but the most generic reference to the sacred any more than it may prescribe a religious orthodoxy."). The unapologetic recognition of the religious nature of public monuments like the Peace Cross in this case is perfectly consistent with the Establishment Clause.

Mears, *Court says ground zero cross can stay*, CNN (July 28, 2014, 1:23 PM), https://www.cnn.com/2014/07/28/us/world-trade-center-cross/.

B. Public Religious Expression in the United States Is Vulnerable to Privatization.

The public recognition of religious identity is under assault, and attempts to squash the public expression of faith are well documented.[14] In addition, "Supreme Court interpretations that have taken a broad view of the establishment clause have tended to encourage the privatization of religious discourse."[15] And "among political theorists, moral philosophers, and military

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[14] *See generally* FAMILY RESEARCH COUNCIL, HOSTILITY TO RELIGION: THE GROWING THREAT TO RELIGIOUS LIBERTY IN THE UNITED STATES (June 2017 ed.), https://downloads.frc.org/EF/EF17F51.pdf; 2 FAMILY RESEARCH COUNCIL, A CLEAR AND PRESENT DANGER: THE THREAT TO RELIGIOUS LIBERTY IN THE MILITARY (May 18, 2017 ed.), https://downloads.frc.org/EF/EF17E95.pdf; Ryan T. Anderson, *The Continuing Threat to Religious Liberty*, NAT. REV., Aug. 14, 2017, at 32, https://www.nationalreview.com/2017/08/religious-liberty-under-attack/ (arguing that "[a]s government [has] assumed authority to regulate more areas of life, the likelihood of its infringing religious liberty [has] increased"); Jefferson B. Sessions, Att'y Gen., Dep't of Justice, Attorney General Sessions Delivers Remarks at the Department of Justice's Religious Liberty Summit (July 30, 2018), https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-department-justice-s-religious-liberty-summit (observing the "eroding . . . of religious freedom").

[15] Augusto Zimmermann & Lael Daniel Weinberger, *Secularization by Law? The Establishment Clauses and Religion in the Public Square in Australia and the United States*, 10 INT'L J. CONST. L. 209, 241 (2012) (citing throughout *McCreary Cty. v. Am. Civil Liberties Union*, 545 U.S. 844 (2005); *Van Orden v. Perry*, 545 U.S. 677 (2005); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947)).

ethicists, there has been a lengthy debate over . . . the doctrine of religious restraint"— which "advocates, in essence, that citizens and their elected politicians privatize their religious convictions in their roles as voters or public servants"—and the application of it "to decisionmaking within liberal democracies." Don M. Snider & Alexander P. Shine, *A Soldier's Morality, Religion, and Our Professional Ethic: Does the Army's Culture Facilitate Integration, Character Development, and Trust in the Profession*, 6 PROF. MIL. ETHICS MONOGRAPH SERIES 6-7 (2014). These are unwelcome developments.

This privatization is harmful, whether in forcing memorials like the Peace Cross to be demolished or in demanding that Americans scrub their faith out of their public lives. Indeed, if religious identity is fundamental and indispensable to being, then limiting public religious expression discourages participants in the public square from bringing their full selves to bear in service to their communities. As our forebears knew (and as many military servicemembers can currently attest), we are a healthier, more resilient people when we can publicly and unabashedly engage in religious expression, whether individually or as a community. *See, e.g.*, George Washington, *Washington's Farewell Address to the People of the United States*, DAILY AM. ADVERT., Sept. 19, 1796, *reprinted in* S. DOC. NO. 106-21, at 20 (2000) ("Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports."). Here, the removal of the Peace Cross will not merely affect the Bladensburg community, or even communities with other monuments depicting crosses. It will send the message that one may not associate faith with any attempt to

grapple with the "big" questions of life and death. It will have a chilling effect on the role of religion in the public square. Indicators of faith—regardless of what faith they represent—will be viewed with increasing disdain by government officials and citizens alike.

Here, the Peace Cross reflects the Bladensburg community's admiration and gratitude for its fallen soldiers. The Peace Cross is the natural consequence of a people touched by war. Whether the committee members selected the cross to invoke a cultural image for the fallen or to live out their faith and express it in their community, the Peace Cross is a perfectly understandable, proper—and constitutional—reflection of the community from which it arose.

II. Faith and Religious Identity Play a Critical Role in Military Service and Must Be Protected.

Compared to other vocations, a reliance on God is even more present and salient in military service. Perhaps because of the nearness of serious injury or death, faith is a source of comfort and strength for soldiers and military families during a life of service. The Second Circuit recognized this dynamic in *Katcoff v. Marsh*, noting that "[a]side from the problems arising out of the sheer size and pluralistic nature of the Army," and the military generally, "its members experience increased needs for religion as the result of being uprooted from their home environments, transported often thousands of miles to territories entirely strange to them, and confronted there with new stresses that would not otherwise have been encountered if they had remained at home." 755 F.2d 223, 227 (2d Cir. 1985).

Given the unique stressors of "how to handle trauma, death or serious injury of soldiers on the field of battle, marital and family stresses of military personnel, tending the wounded or dying," the risk of "drug or alcohol abuse," and "tensions between soldiers and their command," *id.* at 226, a conscious focus on spiritual matters often accompanies military service. As British scholar and author C.S. Lewis noted during the outbreak of World War II, "If active service does not persuade a man to prepare for death, what conceivable concatenation of circumstance would?" C.S. LEWIS, Learning in War-Time (Oct. 22, 1939), *in* THE WEIGHT OF GLORY AND OTHER ADDRESSES 47, 61-62 (rev. ed. 1980). It is unavoidable that "[w]ar threatens us with death and pain," matters about which "[n]o man . . . need try to attain a stoic indifference." *Id.* at 61.

It should thus be no surprise that "[t]he great majority of the soldiers in the Army express religious preferences," 755 F.2d at 226, a fact observed in *Katcoff*, and one that remains true today. Over 65% of American military members profess some form of Christian faith, and over 74% of military members identify with some form of religious group. CDR Charlotte Hunter & Lyman Smith, *Military Leadership and Education & Religion's Role in the U.S. Military Mission*, DEF. EQUAL OPPORTUNITY MGMT. INST. RES. DIRECTORATE 11 (2010). This is no surprise, given the unique demands and stresses of military life, which we must allow to be addressed through all available resources, including religion.

It is undeniable that the spiritual component of our human nature plays an important role in the business of warfare. We dismiss the significance of a soldier's spiritual health at our own peril. Indeed, "[t]he Services can ill afford to lose the irrefutable power of soldiers' personal moralities as they serve in both peace and in war, providing an additional motivation and resilience to prevail in the arduous task and inevitable recoveries inherent in their sacrificial service." Snider & Shine, *supra*, at iii, xii. If religion manifests itself in our public life generally as a result of our human nature, it reveals itself even more so in military service.

A. The Special Role of Religion in Military Service Is Exemplified in the Creation and Existence of Our Chaplain Corps.

Before the Revolutionary War and the founding of our nation, George Washington insisted that "[a] Chaplain for the Regiment ought to be provided; that we may at least have the show, if we are said to want the substance of Godliness!" Letter from George Washington to John Robinson (Nov. 9, 1756), https://founders.archives.gov/documents/Washington/02-04-02-0002.

The Continental Congress recognized this also, and it "attempted to promote religion and virtuous behavior in the Continental Army, as illustrated by the first three of sixty-nine rules passed by Congress in June 1775." THE SACRED RIGHTS OF CONSCIENCE: SELECTED READINGS ON RELIGIOUS LIBERTY AND THE CHURCH-STATE RELATIONS IN THE AMERICAN FOUNDING 218 (Daniel L. Dreisbach & Mark David Hall, eds. 2009). It used this power to "earnestly recommend[] to all

officers and soldiers, diligently to attend Divine Service . . . ,"[16] and it urged "[t]hat all officers in the army of the United States, be . . . strictly enjoined to see that . . . the preservation of morals among the soldiers, are duly and punctually observed."[17]

The first Congress continued in this tradition and "provided for paid military chaplains and established regulations intended to promote religion and virtue in the armed forces." *Id.* at 278.[18] By its power to "raise and support Armies," U.S. CONST. art. I, § 8, cl. 12, "and before the December 1791 ratification of the First Amendment[,] Congress authorized the appointment of a commissioned Army chaplain," *Katcoff*, 755 F.2d at 225.[19] "Since then, as the Army has increased in size[,] the military chaplaincy has been extended[,] and

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[16] *See* Resolution of the Continental Congress (June 30, 1775), *in* 2 Journals of the Continental Congress 1774-1789, at 112.

[17] *See* Resolution of the Continental Congress (Oct. 12, 1778), *in* 12 *id.* at 1001.

[18] The actions of the first Congress are "contemporaneous and weighty evidence of [the] true meaning" of the Constitution and Bill of Rights because "many of [Congress'] members had taken part in framing" those documents. *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 297 (1888), *overruled on other grounds by Milwaukee Cty. v. M.E. White Co.*, 296 U.S. 268, 278 (1935).

[19] *See also* Act of Mar. 3, 1791, ch. XXVIII, §§ 5-6, 1 Stat. 222, 222-23 (providing for the employment of a chaplain as needed "for the public interest" and permitting an allowance of "fifty dollars per month, including pay, rations and forage").

Congress has increased the number of Army chaplains." *Id.* (citations omitted).[20]

The military chaplaincy is important to the well-being of a soldier. The "[f]our recognized core functions of chaplains are providing, facilitating, caring, and advising. Chaplains perform worship services and provide sacramental rites and liturgies according to the requirements of their ordaining and licensing religious body."[21] 2 WAR AND RELIGION: AN ENCYCLOPEDIA OF FAITH AND CONFLICT 552 (Jeffrey M. Shaw & Timothy J. Demy, eds. 2017). There are chaplains to attend to the needs of those of all faiths and to those who do not hold any faith. *See id.*

David Avery, for example, "was one of more than a hundred chaplains in the Continental Army, where faith played a vital role." THOMAS S. KIDD, GOD OF LIBERTY: A RELIGIOUS HISTORY OF THE AMERICAN REVOLUTION 3 (2010). He "spent most of his days praying with sick and dying soldiers," and "helped troops understand that God remained with them, even in defeat." *Id.* 2-3. Later, during the Civil War,

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[20] *See also* 10 U.S.C. § 3073 (to be codified at 31 U.S.C. § 7073) (establishing the Chaplain Corps of the U.S. Army); *id.* § 5142 (to be codified at 10 U.S.C. § 8072) (referring to the Chaplain Corps of the U.S. Navy).

[21] *See also Chaplain Corps*, U.S. ARMY, https://www.army.mil/chaplaincorps#org-about (last visited Nov. 30, 2018) (stating that Army chaplains "perform religious support activities according to [a soldier's] faith and conscience" and "provide religious support of other faith groups by coordinating with another chaplain or qualified individual to perform the support needed").

"[c]haplains provided comfort on the battlefield," "ministered to wounded soldiers in hospitals, provided semiregular preaching and religious instruction in camp, and advocated on behalf of soldiers." 1 WAR AND RELIGION, *supra*, at 32.

This history reveals that the federal government has long recognized that "the morale of our soldiers, their willingness to serve," and "our national defense rests in substantial part on the military chaplaincy, which is vital." *Katcoff*, 755 F.2d at 237; *see also Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005) (noting "the Federal Government's accommodation of religious practice by members of the military"). As one military commander recently put it, "chaplains provide spiritual readiness to keep us resilient and mission-oriented."[22]

B. Throughout Our History, American Soldiers Have Relied on Faith to Endure the Hardships of War.

As noted above, even before the Founding, the formation of the Chaplain Corps was steeped in the need to rely on faith during wartime. Soldiers also individually relied on their faith to cope with the effects of war and understand their role in it. One Civil War infantryman wrote, "I never knew the comfort there is in religion so well as during the past month. Nothing sustains me so much in danger as to know there is one who ever watches over us." Letter from Frederick Pettit

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[22] Andreas Kreuzer, *From family strong to Army strong: How Army chaplains enable 'spiritual readiness' at USAG Bavaria*, U.S. ARMY (Feb. 21, 2018), https://www.army.mil/article/200863/from_family_strong_to_army_strong_how_army_chaplains_enable_spiritual_readiness_at_usag_bavaria.

to his sister (June 1, 1864), *in* ROBERT J. MILLER, BOTH PRAYED TO THE SAME GOD: RELIGION AND FAITH IN THE AMERICAN CIVIL WAR 12 (2007).

During World War I—the conflict commemorated by the Peace Cross—faith was the motivation for many soldiers. They fought "to establish or to broaden a condition—peace, freedom, democracy"—and were soldiers who fought "for a hope." JONATHAN H. EBEL, FAITH IN THE FIGHT: RELIGION AND THE AMERICAN SOLDIER IN THE GREAT WAR 168 (2010). One historian explained that during the First World War, "American soldiers and war workers waged war for communal and personal redemption. They fought and died for a more democratic and, in their eyes, more Christian world order . . . ." *Id.* Sergeant Alvin York of Tennessee originally joined the war as a conscientious objector. But he turned to "praye[r] to God for guidance" and took up arms after he and his superior had "studied the whole business-through the words of the Lord" and "c[a]me to a right understanding." HIS OWN LIFE STORY AND WAR DIARY 169, 171 (Tom Skeyhill, ed. 1930). He wrote, "these were trying hours for a boy like me, trying to live for God and do His blessed will." *Id.* at 173.

In World War II, there are countless examples of the positive role of faith in servicemembers' lives. Conscientious objector Desmond Doss, featured in the recent film *Hacksaw Ridge*, integrated his faith into his service as an Army medic, for which he received a

Medal of Honor.[23] General George C. Marshall looked to the importance of faith while facing the responsibilities of battle,[24] and General George S. Patton famously cajoled his men to beseech the help of the Almighty by circulating 250,000 copies of a prayer for fair weather.[25] And Navy Lieutenant Paul Bradley of Brooklyn, New York, a Catholic chaplain, embodied the role of faith in troop morale:

> The padre landed on D-Day with early assault waves after serving at the front lines for several hours . . . . He performed his duties for two days and two nights without rest, and in the words of a naval medical officer, "Father Bradley did more for the morale of the wounded than half of the stuff we could give them."

STEVE RABEY, FAITH UNDER FIRE: STORIES OF HOPE AND COURAGE FROM WORLD WAR II 4 (2002).

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[23] Katie Lange, *Pfc. Desmond Doss: The unlikely hero behind "Hacksaw Ridge,"* DOD NEWS (Feb. 28, 2017), https://www.army.mil/article/183328/pfc_desmond_doss_the_unlikely_hero_behind_hacksaw_ridge.

[24] David Hein, *In War for Peace*, TOUCHSTONE MAG. (May/Apr. 2013), http://www.touchstonemag.com/archives/article.php?id=26-02-041-f.

[25] James H. O'Neill, *The True Story of the Patton Prayer*, NEW AM., Jan. 12, 2004, at 39, https://www.fpparchive.org/media/documents/us_military/The%20True%20Story%20of%20the%20Patton%20Prayer_Msgr.%20James%20H.%20O%27Neill_January%2012,%202004_The%20New%20American.pdf.

Veterans of armed conflicts later in the twentieth century also testify to the role of faith in their survival and healing—many in the notorious Vietnamese prison the "Hanoi Hilton,"[26] or Hoa Lo Prison. Senator Jeremiah Denton cited his Catholic faith as the key to his survival of seven years as a prisoner of war in that jail.[27] Senator John McCain's faith sustained him as he was held in hellish conditions in the same prison.[28] Facing hunger, recurring dysentery, injuries, and "the uncertainty of when his next beating might occur," McCain was propelled by trust in God: "'Three things kept me going,' he said. 'Faith in God, faith in my fellow prisoners and faith in my country.'"[29] He "[fell] back on [his faith] as a net, as a way of salvation."[30]

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[26] *See* Ray Nothstine, *35th Anniversary of 'The Passing of the Night'*, ACTON INST. POWERBLOG (May 16, 2008), http://blog.acton.org/archives/2335-35th-anniversary-of-thepassing-of-the-night.html.

[27] *Jeremiah Denton, Navy officer who survived torture as Vietnam POW, dies*, CATH. NEWS SERV. (Apr. 1, 2014, 12:00 AM), http://www.catholicnews.com/services/englishnews/2014/jeremiah-denton-navy-officer-who-survived-torture-as-vietnam-pow-dies.cfm.

[28] *See* Johnny Dodd, *Sen. John McCain, Former POW, Opened Up to PEOPLE About His Faith in God and His Country*, PEOPLE, (Aug. 25, 2018, 9:47 PM), https://people.com/politics/john-mccain-faith-pow/.

[29] *Id.*

[30] Maeve Reston, *How McCain's faith sustained him and allowed him to forgive himself*, CNN (Aug. 30, 2018, 2:18 AM), https://www.cnn.com/2018/08/30/politics/mccain-faith-service/index.html.

When released from solitary confinement, McCain's captors "wouldn't give him a Bible, so he would come up with verses from memory that [he and his fellow prisoners] could study together."[31] Brigadier General James Robison "Robbie" Risner, to whom John McCain himself looked for inspiration, also drew upon his faith while in Hoa Lo Prison.[32] "To make it, I prayed by the hour. It was automatic, almost subconscious. I did not ask God to take me out of it. I prayed he would give me strength to endure it," he said.[33] Risner recounts that he and the other prisoners in Hoa Lo Prison drew upon faith to the point that they "were no longer embarrassed talking about God or religion."[34]

Decades later, former Army Ranger Jeff Struecker, a veteran of the Battle of Mogadishu in Somalia—which was recounted in the well-known account of *Black Hawk Down*—said that before joining the Army, he "had a very strong Christian faith."[35] Because of it, he had an "overwhelming sense of peace [during the battle] when most people were . . .

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[31] *Id.*

[32] Nothstine, *supra* note 26.

[33] *Id.*

[34] *Id.*

[35] Dave Gustafson, *20 years after Black Hawk Down, a 'Return to Mogadishu,'* ALJAZEERA AM. (Oct. 4, 2013, 9:00 PM), http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/10/4/20-years-after-blackhawkdownareturntomogadishu.html.

panicking."[36] Others reportedly wanted to know how he kept his composure. "God was leading me. I became an Army chaplain. It was directly a result of the day after this battle in Mogadishu."[37]

Even more accounts have emerged from the recent conflicts in Afghanistan and Iraq, revealing that soldiers today still rely on religion to find hope and strength during and after war.[38] When a unit of the First Cavalry Division was on a rescue mission during the conflict in Iraq, Chaplain Ramon Pena recited a prayer before departure: "Lord, protect us. Give us the angels you have promised and bring peace to these soldiers as they go out. In the name of the Father, the Son, and the Holy Spirit." MARTHA RADDATZ, THE LONG ROAD HOME 3 (2007). These are only a select few of the many stories of servicemembers relying on their faith as a source of strength in service to country.

Throughout its history, our nation has repeatedly recognized that, of all places, faith is especially important in the military—in both life and death—and we scrub it out at our own peril. Indeed, how could we expect servicemembers to do a job that demands so much, while divorcing them from the very spiritual resources they may need to accomplish that job?

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[36] *Id.*

[37] *Id.*

[38] *See, e.g.*, SURRENDER ONLY TO ONE (New Revolution Entertainment 2016) (documenting how faith and religious experiences provided veterans from the Afghanistan and Iraq conflicts with comfort and healing from the traumatic effects of war).

C. Public Religious Expression in the Military Is Vulnerable to Privatization.

Despite the consistent, historical role of faith in servicemembers' lives, the threat of privatization of faith in broader society also affects those in the military. Scholars have observed that "coincident with the growing secularization of American society, the culture of our Armed Services has become more hostile to many things religious, including religious expression by individuals in uniform and the application of any sort of religious basis for decisionmaking." Snider & Shine, *supra*, at 10. Servicemembers should not be forced to suppress and hide the faith on which they may rely. Such a demand, especially when based on a misunderstanding of what constitutes a violation of the Establishment Clause,[39] contorts the nature of faith

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[39] Even the most attenuated connections between military service and religion are often met with constitutional challenges and harsh rhetoric. For example, a legal challenge to a "POW/MIA 'Missing Man' table display" at a naval hospital was raised because it had a Bible, "written materials that describe the United States as being 'founded as one nation under God,'" and "a Japanese translation of these materials." Matthew M. Burke, *Advocacy group pushes Navy to remove Bible from Okinawa POW/MIA display*, STARS & STRIPES (Apr. 6, 2018), https://www.stripes.com/news/advocacy-group-pushes-navy-to-remove-bible-from-okinawa-pow-mia-display-1.520724.

This type of challenge, erroneously cast as an Establishment Clause violation, contradicts the principles underlying a memorandum released by the Department of Veterans Affairs ("VA") explaining that "[r]eligious symbols may be included in a VA display in a public area of a VA facility provided the display does not favor one religion over another and conveys a primarily secular message." Memorandum from Acting Assistant Sec'y for

and deprives them of an essential *way of being* that is indispensable to their unique calling.

Religious belief shapes and defines the lives of its adherents and cannot be bifurcated from day-to-day living. Stifling the public expression of religious belief can harm morale and well-being by alienating troops from the core convictions that give them meaning and purpose. In fact, "[l]iving and leading from an identity that is not integrated, meaning one that places one's personal morality outside the scope of professional ethics, drawing then on each one on a situational basis, does not comport with Army leadership doctrines." *Id.* at 19. An unintegrated identity "will quickly be recognized by followers as inauthentic." *Id.* By "contrast, recent research from Iraq again establishes that in combat, authentic military leaders have high impacts on their followers." *Id.* at 19-20.

Human Res. & Admin. to Under Sec'ys, Assistant Sec'ys, & Other Key Officials 4 (Aug. 19, 2016), https://www.diversity.va.gov/policy/files/rel-exp-memo-2016-update.pdf. Though each department has its own regulations, the logic of the VA Memorandum—that displays of religious symbols in public areas of military facilities do not violate the Establishment Clause—could be extended to such displays in all departments.

See also, e.g., Tess Williams, *Air Force volunteer work with Salvation Army raises questions*, GRAND FORKS HERALD (Dec. 14, 2018, 4:13 PM), https://www.grandforksherald.com/news/4543433-air-force-volunteer-work-salvation-army-raises-questions (reporting on an allegation that an email from senior officials "offer[ing] an opportunity to volunteer for the Salvation Army during duty hours" violated Air Force Standards and "the no-establishment clause of the First Amendment").

The military and federal government have taken some measures against privatization by providing programs for spiritual fitness, formation, and accommodation. In recent years, Congress has explicitly required the protection of the free exercise of religion for servicemembers.[40] On the heels of these statutory requirements, the Department of Defense revised an instruction making clear that religious freedom must be protected throughout the service branches[41]—a requirement that has already protected Sikhs in the Army[42] and Christians in the Air Force

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[40] *See* National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 532, 127 Stat. 672, 675 (providing for the "[e]nhancement of protection of rights of conscience"); National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 533, 126 Stat. 1632, 1636 (providing for the "[p]rotection of rights of conscience").

[41] *See* DEP'T OF DEF., INSTR. NO. 1300.17, ACCOMMODATION OF RELIGIOUS PRACTICES WITHIN THE MILITARY SERVICES § 4(a), (e)(1) (revised Jan. 22, 2014), https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130017p.pdf (stating that the Department of Defense "places a high value on the rights of members of the Military Services to observe the tenets of their respective religions," that "[r]equests for religious accommodation will be resolved in a timely manner and will be approved," so long as they do "not adversely affect mission accomplishment," and that "requests for religious accommodation from a military policy, practice, or duty that substantially burdens a Service member's exercise of religion may be denied only when the military policy, practice, or duty: (a) Furthers a compelling governmental interest. (b) Is the least restrictive means of furthering that compelling governmental interest.").

[42] *See, e.g.*, *Singh v. McHugh*, 109 F. Supp. 3d 72, 93, 101 (D.D.C. 2015) (concluding that the Army failed to show that denying a religious accommodation to observe Sikh practices "further[ed] the

alike.[43] Whether to the immediate benefit of Sikhs, Christians, or servicemembers of any other religion, these policy changes recognize that one should not and cannot separate faith from service.

The government also recognizes the importance of faith in military life through spiritual fitness programs. For example, the Marine Corps announced such a program in 2016 to emphasize spiritual fitness in addition to physical and social fitness,[44] and the Army has a list of resources to aid spiritual fitness.[45]

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government's compelling interests" or was "the least restrictive means of furthering [the government's] interests" under Department of Defense Instruction 1300.17).

[43] *See Bohannon v. Wilson*, Agency Docket No. MO-2017-00003, slip op. at 12-13 (Dep't of the Air Force Mar. 27, 2018), https://firstliberty.org/wp-content/uploads/2018/04/Col-Bohannon-Final-Appeal-Decision.pdf (applying Department of Defense Instruction 1300.17 to find that a less restrictive means was available and thus the servicemember's religious exercise had to be protected).

[44] *See* Robert B. Neller, *Spiritual Fitness*, MARINES (Oct. 3, 2016), https://www.marines.mil/News/Messages/Messages-Display/Article/962784/spiritual-fitness/ ("[S]piritual well-being makes us better warriors and people of character . . . . By attending to spiritual fitness with the same rigor given to physical, social and mental fitness, Marines and Sailors can become and remain the honorable warriors and model citizens our Nation expects.").

[45] *See Spiritual Health*, ARMY PUB. HEALTH CTR., https://phc.amedd.army.mil/topics/healthyliving/bh/Pages/SpiritualHealth.aspx (last updated Dec. 15, 2017).

These are welcome and important advancements against the privatization of faith in the military. But as this case demonstrates, the threat persists. Removing a war memorial like the Peace Cross—simply because it is shaped like a cross, located on government property, and provided with routine maintenance, *see Am. Humanist Ass'n v. Md.-Nat'l Capital Park & Planning Comm'n*, 874 F.3d 195, 200 (4th Cir. 2017)—would be counterproductive and cut against a realistic recognition of the role of religion in military life. It would undoubtedly have a chilling effect on religious expression in the military, sending the dangerous message that faith has no part in how one grapples with life and death within military service. As Justice Samuel Alito so aptly put it in another case involving a cross-shaped war memorial: "The demolition of this venerable[,] if unsophisticated, monument would . . . have been interpreted by some as an arresting symbol of a Government that is not neutral but hostile on matters of religion and is bent on eliminating from all public places and symbols any trace of our country's religious heritage." *Salazar v. Buono*, 559 U.S. 700, 726 (2010) (Alito, J., concurring).

III. The Same Faith That So Permeates and Affects Military Life Must Be Allowed to Inform How Communities Honor Servicemembers' Deaths.

Just as religion plays a role in military life, it plays a role in how individuals, families, communities—and our nation—honor servicemembers who have died. As Petitioners argue, "a memorial honoring war dead is precisely where one would expect to encounter religious imagery in a government display." Br. for the Am.

Legion Pet'rs at 55. Religions—including Christianity—inform how we think about and grapple with death.[46] *See* Burke & Neimeyer, *supra*, at 1088. The Bladensburg community decided to use a cross to commemorate those who had made the ultimate sacrifice, and its decision to invoke religious imagery in coping with that loss should not suffer defenestration, lest we disregard an essential aspect of humanity.

Historically, the legislative and executive branches of our federal government have recognized and even reinforced the link between religion and the commemoration of those who have laid down their lives in military service. More than 150 years ago in his Gettysburg Address, President Abraham Lincoln memorialized the Union soldiers who had laid down their lives in battle: "We here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom."[47] President Lincoln's declaration that the soldiers of the Civil War would not die in vain invokes God and the idea of a "new birth," demonstrating at the highest level of the Armed Forces—the Commander-in-

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[46] Even those who are not religious understand that religious imagery can be used to cope with the idea of death or loss. *See* Anugrah Kumar, *American Atheists Lose Lawsuit Over 9/11 Cross*, CHRISTIAN POST (Mar. 30, 2013), https://www.christianpost.com/news/american-atheists-lose-lawsuit-over-9-11-cross-92950/ (stating that atheists disagreed with the filing of a suit to remove the Ground Zero Cross from the National September 11 Memorial & Museum).

[47] *Today in History - November 19: Gettysburg Address*, LIBR. OF CONG., https://www.loc.gov/item/today-in-history/november-19/ (last visited Dec. 17, 2018).

Chief—an appreciation for the relationship between religion and commemoration.

In 1923, Congress created the American Battle Monuments Commission ("ABMC") to oversee cemeteries across the world dedicated to the American Expeditionary Forces of the First World War. Subsequently, the ABMC undertook to care for the fallen of many other wars.[48] Based on the decision of the ABMC, the grave sites for "World War I and World War II cemeteries [are] marked by a headstone of pristine white marble" in the shape of a Latin cross.[49]

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[48] *History*, AM. BATTLE MONUMENTS COMM'N, https://www.abmc.gov/about-us/history (last visited Dec. 5, 2018) (describing ABMC's origins and stating that it "administers, operates and maintains 26 permanent American burial grounds and 29 separate memorials, monuments and markers, on foreign soil," "maintains three memorials in the United States," and oversees the graves of "124,000 American war dead interred in these cemeteries, of which 30,973 are from World War I commemorative cemeteries, 92,958 from World War II commemorative cemeteries," "750 from the Mexican-American War," "more than 15,000 American veterans and others . . . interred in the Mexico City National Cemetery, Corozal American Cemetery and Clark Veterans Cemetery," and "[m]ore than 94,000 American servicemen and women who were missing in action, lost, or buried at sea during World War I, World War II, the Korean War and the Vietnam War").

[49] *Id.* These grave-markers blanket cemeteries across the globe, including 16 foreign countries and 3 memorials within the United States. *See Burial and Memorialization Statistics*, AM. BATTLE MONUMENTS COMM'N, https://www.abmc.gov/node/1975 (last visited Nov. 30, 2018).

The ABMC used these grave markers because at the time of World War I and II, the cross had "developed into a central symbol of the American overseas cemetery," starting with the Army's act of "mark[ing] soldiers' graves with temporary and wooden crosses or Stars of David." G. KURT PIEHLER, REMEMBERING WAR THE AMERICAN WAY 101 (1995). Thus, the use of the cross as a symbol of the war dead culminated in the ABMC's decision to "adopt the marble cross, and where appropriate a marble Star of David, as the permanent headstone for the overseas cemeteries," which it had done in light of "the public associat[ion] [of] the cross with the American cemeteries." *Id.*

Only two years after the creation of the ABMC,[50] the members of the Prince George's County Memorial Committee, with the financial support of the Bladensburg community, chose to commemorate the forty-nine soldiers with a cross—just like the graves overseen by the ABMC. As Petitioners argue, "'the cross' . . . became 'a central symbol of the American overseas cemetery,'"[51] and "[t]he Committee's decision to use a cross-shape reflects the fact that, in the aftermath of WWI, crosses became a strong cultural image of the fallen."[52] There was nothing—neither then nor now—unconstitutional about recognizing the significance of a life given in service to one's country

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[50] *See* Pet. App. at 105a ("The Bladensburg World War I Memorial was erected in 1925 . . . .").

[51] Br. for the Md.-Nat'l Capital Park & Planning Comm'n Pet'r at 4 (citations omitted).

[52] Pet. for Writ of Cert. of Am. Legion at 6.

using a religious symbol. Nor would there be anything unconstitutional if the cross was a representation of the community's way of commemorating sacrifice according to a widely-shared faith.

Current federal government policy demonstrates the military's investment in preserving the religious traditions of its servicemembers by deferring to the commemorative traditions of all religions. Recent military funeral regulations provide excerpts from religious scriptures and prayers from many different religions for commanding officers to use in committal services.[53] And a recent Department of Veterans Affairs ("VA") policy to "accommodate religious expression at committal services held at VA National Cemeteries" also shows the recognition of religion in honoring a soldier's sacrifice:

> VA values and respects Veterans and their families' right to committal services held at VA National Cemeteries that honor their faith tradition. The wishes of a deceased Veteran's family remain paramount in determining what, if any, religious expression will take place at a Veteran's committal service. Families are free to have a committal service with or without religious references or the display of religious or other symbols.

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[53] *See* BUREAU OF NAVAL PERS., U.S. DEP'T OF THE NAVY, NAVPERS 15555D, NAVY MILITARY FUNERALS apps. A-F (2015), https://www.public.navy.mil/bupers-npc/support/casualty/Documents/NAVPERS%2015555D.pdf (providing for committal-service instructions for Protestants, Catholics, Jews, Eastern Orthodox Christians, Muslims, and Buddhists).

Memorandum from Acting Assistant Sec'y for Human Res. & Admin. to Under Sec'ys, Assistant Sec'ys, & Other Key Officials 4 (Aug. 19, 2016), https://www.diversity.va.gov/policy/files/rel-exp-memo-2016-update.pdf.

The "wishes" of the Bladensburg families and the community should be no less "paramount" today than they were a century ago when the Peace Cross was first conceived. As one mother explained, "The chief reason I feel so deeply in this matter, my son Wm. F. Redman, lost his life in France and because of that I feel that our memorial cross is, in a way, his grave stone." Pet. App. at 102a. The fact that the community marked this surrogate grave with a cross is, at most, simply reflective of the faith—the *way of being*—expressed by members of the Bladensburg community.

A religious expression honoring the memory of fallen comrades can hardly be called an "establishment" of religion simply because of its religious significance. *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014) (stating that "the Establishment Clause must be interpreted 'by reference to historical practices and understandings,'" not just religious significance (citation omitted)); *see id.* at 591 ("The inclusion of a brief, ceremonial prayer as part of a larger exercise in civic recognition suggests that its purpose and effect are to acknowledge religious leaders and the institutions they represent rather than to exclude or coerce nonbelievers."); *see also* Br. for the Am. Legion Pet'rs at 56-57 (describing why the Peace Cross, despite "us[ing] a sectarian symbol to honor the fallen servicemembers," does not pose a "real threat of establishment").

As this Court has aptly noted, what matters is that "history shows that the specific practice is permitted." *Town of Greece*, 572 U.S. at 577. Cross-shaped memorials have been used in other contexts by individual and local governments for more than 200 years. *See* Durbin, *supra*, at 26. "[F]or a long time now, we . . . have been commemorating the role that religion has played in our history through the placement and maintenance of cross monuments." *Kondrat'Yev v. City of Pensacola*, 903 F.3d 1169, 1180, 1181-82 (11th Cir. 2018) (Newsom, J., concurring) (citing examples). For this reason, one petitioner argues, "[this] history makes it unlikely that those who drafted the First Amendment thought that this custom could not 'coexist[] with the principles of disestablishment and religious freedom.'" Br. for the Md.-Nat'l Capital Park & Planning Comm'n Pet'r at 49 (quoting *Marsh v. Chambers*, 463 U.S. 783, 786 (1983)). In this respect, "history shows that the specific practice," here the maintenance of a commemorative cross by a local government, "is permitted," *Town of Greece*, 572 U.S. at 577, regardless of its religious significance.

Religion's integration into our *way of being* results in it informing how we live our lives as much as how we want them remembered. For many, faith, life, and death are inseparable. For this as much as any other consideration, the Peace Cross should be allowed to stand.

Justice Arthur Goldberg warned that an "untutored devotion to the concept of neutrality can lead to . . . a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious." *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 306

(1963) (Goldberg, J., concurring). If the Fourth Circuit's decision in this case stands, that prescient warning will be born out. Indeed, the decision will have a deleterious effect on religious expression in military and civilian life alike, chilling such expression in communities around this nation and precluding them from expressing their own unique religious identities.

The Peace Cross is consistent with this country's long-standing tradition of memorializing its fallen servicemembers. It evokes the overseas grave-markers for soldiers who never returned home, commemorates the sacrifice of forty-nine military servicemen from Prince George's County, and reflects the religious heritage of their community, our nation, and our military. To dismantle the Peace Cross is to disregard both a community's and their fallen servicemembers' *way of being* and this nation's historical recognition of the importance of religion, particularly in times of sorrow. The Establishment Clause simply does not support the outcome Respondents seek.

CONCLUSION

For the foregoing reasons, this Court should rule in favor of Petitioners on all questions presented.

Respectfully submitted,

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